

Margaret,

Here are the few minor edits I saw.

"Non-Compact" sounds like "not in a compact". Do you mean to say "out-of-compact" or "out-of-region"?

Ciao,

Kathryn

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### PART 21. TEXAS LOW LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

#### CHAPTER 675. PRELIMINARY RULES SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

##### 31 TAC §§675.21 - 675.23

The Texas Low Level Radioactive Waste Disposal Compact Commission ("Commission") proposes the adoption of a new Subchapter B, to be captioned "Exportation and Importation of Waste" (including §675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," §675.22 to be captioned "Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility," and §675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Management or Disposal"), to be contained in Texas Administrative Code, Title 31, Part 21, Chapter 675, governing export

and import of low-level radioactive waste and fees associated with those activities.

#### BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED SECTIONS

Entry into the Texas Low Level Radioactive Waste Disposal Compact was ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The initial party states were Texas, Maine and Vermont. Texas is the "host state" in that it is the state that will host the disposal facility to accept low-level radioactive waste for management and disposal in accordance with the terms of the compact. With the passage of Public Law 105-236, "Texas Low-Level Radioactive Waste Disposal Compact Consent Act" ("Compact"), and signing into law by President Clinton in 1998, the United States federal government allowed the Commission to come into existence. Subsequent to U.S. ratification, Maine withdrew from the Compact.

As an instrumentality of the party states, the purpose of the Compact is to provide a framework for a cooperative effort to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof. A further purpose is to cooperate among the party states in the protection of the health, safety, and welfare of their citizens, and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of the compact. In November 2008, Texas Governor Rick Perry named the six Texas members of the Commission. The State of Vermont also named two Commissioners with the last Commissioner being named in March 2009. Subsequently, one Commissioner from Vermont was replaced in November 2009. An alternate Commissioner for Vermont was also appointed. The Commission held an inaugural organizational meeting on February 13, 2009.

Under the terms of §3.03 of the Compact, the Commission is a legal entity, separate and distinct from the party states. In enforcing that position, the Compact stipulates, "the liabilities of the commission shall not be deemed liabilities of the party states." Functionally, the Commission has been established as an instrumentality of the party states, and is authorized by the U.S. Congress in P.L. 105-236 to manage and restrict interstate commerce in low-level radioactive waste management and disposal within the party states, as an exception to the "Dormant" Commerce Clause doctrine of the U.S. Constitution.

A new Subchapter B, "Exportation and Importation of Waste" is proposed to set out the procedures and criteria by which such petitions for export and imports may be considered and granted or denied by the Commission and by which permits for export and import agreements may be granted. The sections set and assess fees associated with evaluating and processing export petitions and proposed import agreements. The sections establish export permit fees and import agreement fees.

#### SECTION-BY-SECTION DISCUSSION

§675.21. Exportation of Waste by a Compact Generator to a Non-Party State for Disposal.

Proposed §675.21(a) prohibits exportation of low-level radioactive waste from the Compact unless a person proposing to export has filed a written export petition with the Commission and the Commission has approved the export petition and issued an export permit in accordance with these sections.

definition?

(3) The availability of the Compact Facility for the disposal of the waste involved;

(4) The economic impact on the Host County, the Host State, and the Compact Facility operator of granting the export permit;

(5) The economic impact on the petitioner;

(6) Whether the proposed disposal facility has authorization to import the waste into the region in which the disposal is to take place;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or passed due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility, the petitioner, the Host County, the Host State, or the public; and

(10) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(g) Decision by the Commission--The Commission may take one of the following actions on the export petition, in whole or in part: approve the export petition; deny the export petition; or approve the export petition subject to terms and conditions as determined by the Commission and as ultimately documented in the export permit.

(h) Terms and Conditions--The Commission may impose any terms or conditions on the export permit as is determined by the Commission.

(i) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.

(2) The Commission may, on its own motion or in response to a petition for amendment from the permit holder of an export permit for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the permit. The Commission may provide a reasonable time to allow the existing permit holder to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission.

(3) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report describing the amount and type of waste exported in the period from September 1 to August 31. The form of the report shall be prescribed by the Commission and shall be available on the Commission's web site, or may be obtained at a location that will be posted on the Commission's website. Failure to timely file this report may result in denial of future export petitions.

(4) An Export Permit is not assignable or transferable to any other person.

(j) Agreements to Export--Nothing in this subchapter shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, or its disposal pursuant to 10 CFR §20.302 (now 10 CFR §20.2002).

(k) Form of Export Permit--The Export Permit shall be on a form promulgated by the Commission and posted on the Commission's website. The form may be amended by the Commission from time to time.

(l) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact.

§675.22. Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

(a) Where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility, party state generators are not required to obtain an export permit; however,

(b) The generator shall be required to file a report with the Commission prior to proposed export of waste. The report shall include the following information:

(1) The volume of waste proposed for exportation, the type, physical and chemical form of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, and the location and name of the facility that will receive the waste for treatment;

(2) The location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or blended with waste from other generators, and whether the exported waste is treated to encapsulate the waste;

(c) Upon return of the waste to the generator, the generator shall file a report informing the Commission of:

(1) The volume, physical form and activity of the waste returned to the party state generator; and

(2) Certifications by the processor and generator that the waste has not been downblended or blended, mixed or comingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, not to exceed 1 percent of the total activity.

§675.23. Importation of Waste from a Non-Compact Generator for Management or Disposal.

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states.

(b) Disposal capacity is reserved for Texas and Vermont calculated by total pre-treatment volume and total activity, and neither shall be reduced by non-Compact waste. Such disposal capacity shall be established every 5-years by a report of the Commission.

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certify that the disposal of imported waste will not reduce capacity for Party State generated waste. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

(d) Agreement Required--No person shall import any low-level radioactive waste for management or disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule.

(e) Form of Agreement--The form of the Agreement shall be promulgated by the Commission and posted on the Commission's web

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what does this mean?

certified

site, or otherwise made readily accessible to generators and to the public.

(f) Fee for Proposed Importation Agreements.

(1) Import Agreement Application Fee--An non-refundable, application fee of \$500 shall accompany the proposed agreement. Payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(2) No action shall be taken on any proposed agreement until the requisite fees are paid.

(3) Import Agreement Evaluation Fee--When the proposed agreement is reviewed and acted upon by the Commission, an additional, nonrefundable fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. This fee shall be by check or money order and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) The fee will be assessed to recover the actual cost of evaluating the proposed agreement and may consider, but not be limited to these factors:

(A) staff expenses;

(B) supplies;

(C) direct and indirect expenses;

(D) purchased services of consultants such as engineers, attorneys or consultants, and

(E) other expenses reasonably related to the evaluation.

(5) This fee will be due regardless of whether or not an import agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(g) Notice and Timing of Agreement--A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. The proposed import agreement shall be accompanied by a certification by Texas Commission on Environmental Quality that the waste acceptance criteria have been met for the proposed waste importation. By electronic mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the import agreement to the Commission's web site and to the Texas Register. Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 20 days after the date the proposed import agreement was received by the Commission. By electronic mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission, and a copy shall also be delivered by Certified mail. The Commission shall distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator, the petitioner, and the public.

(h) Review of Proposed Import Agreement--After receiving the proposed import agreement and any comments that have been made

thereon, the Commission at a meeting held promptly, but no sooner than 60 days or later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

(1) The volume, type, physical form and activity of waste proposed for importation;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;

(4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

(5) Whether the Compact Facility operator has authorization to dispose of the proposed waste;

(6) The effect on the Compact Facility's total annual volume recommended for importation;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility operator, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(10) The authorization of a person to export (if applicable);

(11) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact; and

(12) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators.

(i) Decision by the Commission--The Commission may take one of the following actions on the proposed importation agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; or approve the proposed agreement subject to terms and conditions as determined by the Commission.

(j) Terms and Conditions--The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

(k) Importation Agreement Duration, Amendment, Revocation, Reporting, Assignment and Fees.

(1) An importation agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder for amendment of an importation agreement for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the existing exporter and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.